IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.15902 of 2018
and
W.M.P.No.18899 of 2018

J.Ibrahim ... Petitioner

Vs.

1.The Deputy Commercial Tax Officer,
Cuddalore Town, Sub-Jail Road,
Cuddalore - 607 001.

2.The Assistant Commissioner (CT)(FAC),
Cuddalore (Town) Assessment Circle,
No.8, Sub Jail Road,
Manjakuppam, Cuddalore 607 001.

3.The Proprietor, Dhanalakshmi Traders,
124, A.J.Colony, I Street,
Royapuram, Chennai - 600 013.

4.The Branch Manager,
Indian Overseas Bank,
Manjakuppam,
Cuddalore - 607 001. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari, call for the records and quash proceeding Rc.A3/1644/2017 dated 11.05.2018 issued by the 1^{st} and 2^{nd} respondents.

For Petitioner :Mr.D.Baskar & Manjula Baskar
For Respondents: M/s.G.Dhana Madhri,
Government Advocate
for R1 & R2
Mr.Rajendran Raghavan
for R4
Not ready notice for R3

O R D E R

The petitioner has challenged the impugned order dated 11.05.2018, freezing the bank account of the petitioner to an extent of Rs.14,38,200/- (Rupees Fourteen Lakhs Thirty Eight Thousand Two Hundred only). This freezing order was issued pursuant to a demand notice dated 06.12.2017 which in turn was purportedly issued pursuant to an order dated 30.09.2016 confirming the demand in notice dated 13.07.2016. The petitioner appears to have given his response to the aforesaid notice dated 13.07.2016, to the Inspector of Police on 19.07.2016 and 21.07.2016 to the respondent/Deputy Commercial Tax Officer. The petitioner thereafter filed a Writ Petition in W.P.No.44178 of 2016 wherein he had impugned the demand notice dated 13.07.2016 which appears to have been disposed at the time of admission. The operative portion of the order reads as under:-

> "1.Issue notice Mr.Venkatesh, learned Government Advocate, accepts notice on behalf of the first respondent. With the consent of the counsel for the parties, the writ petition is taken up for final disposal.
>
> 2.Briefly, it is the case of the petitioner that he has been doing business in the sale of iron scrape under the name of 'Ibrahim Steel Traders' for the past 15 years. The petitioner avers that, since his turnover is less than Rs.5 Lakhs, it is below the tax limit. The petitioner apparently is aggrieved by a notice dated 13th July, 2016, wherein, the first respondent has alleged that he had effected sales of cumulative value of Rs.39,67,449/- during the assessment year 2015-16 qua, neither monthly returns were filed nor tax was paid.
>
> 3.The said notice shows that the sale allegedly has been made to one Dhanalakshmi Traders. I may also note that via the said notice, the first respondent had also given an opportunity to the petitioner of personal hearing. The hearing as per the notice was fixed on 20th July, 2016.
>
> 4.Learned counsel for the petitioner concedes that his client has not participated in the hearing accorded by the respondent. It is, in these

circumstances, that the petitioner has approached this Court. Therefore, if no final order has been passed by the respondent uptill now, then the first respondent will dispose of the petitioner's representation dated 21.07.2016. Before disposing of the said representation, the first respondent will be at liberty to issue a fresh notice of hearing to the petitioner. If necessary, before passing a final order, the first respondent will also call upon the second respondent to explain the transaction.

5.The writ petition is thus, disposed of with the aforesaid directions. No costs. Consequently, the connected pending applications are also closed."

2.It is pursuant to the aforesaid order the respondent initiated the recovery proceedings by seeking to attach by freezing the bank account of the petitioner, which has been impugned in the present Writ Petition. It is the categorical stand of the petitioner that though notice dated 13.07.2016 has been served on time, he was not given an opportunity for personal hearing and no order has been communicated to him. On the other hand, it is the contention of the learned counsel for the respondent/Commercial Tax Department that an order came to be passed on 13.09.2016 and he has produced a copy of the acknowledgment and submits that the order dated 23.12.2016 was obtained by the petitioner by suppressing the fact that the order dated 13.09.2016 has been passed and duly served on the petitioner on 03.11.2016.

3.I have considered the arguments of the learned counsel for the petitioner and the learned counsel for the respondents.

4.The Writ Petition in W.P.No.44178 of 2016 came to be disposed at the time of admission itself and it has left open for speculation by both the petitioner and the respondents as to whether indeed an order had been passed earlier. In the counter, it is stated that the order dated 13.09.2016 had been served on the petitioner on 03.11.2016. According to the petitioner, no such order was passed or communicated. Be that as it may, the complaint of the petitioner appears that the TIN number has been misused by one Dhanalakshmi Traders and that fake bills were generated and therefore he has faced unnecessary demand notice pursuant to which the impugned recovery proceedings have been initiated.

5.This matter would require proper adjudication by the respondent. Under these circumstances, I set aside the impugned order and the recovery proceedings initiated against the petitioner and remit the case back to the respondent to pass speaking order within a period of three months from the date of receipt of a copy of this order. The petitioner is directed to file his representation/reply, if any, within a period of one month from the date of receipt of a copy of this order. The respondent shall pass orders on merits after hearing the petitioner.

6.Writ Petition stands disposed of with the above observations. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

jas
To

1.The Deputy Commercial Tax Officer,
Cuddalore Town, Sub-Jail Road,
Cuddalore - 607 001.

2.The Assistant Commissioner (CT)(FAC),
Cuddalore (Town) Assessment Circle,
No.8, Sub Jail Road,
Manjakuppam, Cuddalore 607 001.

+1cc to Mr.R.Gururaj , Advocate SR.No. 741
+1 cc to Spl Government Pleader Sr.No. 702

W.P.No.15902 of 2018
and
W.M.P.No.18899 of 2018

A.SK(05.02.2021).